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STATE OF MICHIGAN,  
IN THE SUPREME COURT

ON APPEAL FROM THE COURT OF APPEALS.

Hilda R. Gage, E. Thomas Fitzgerald, Jane E. Markey, JJ

People of the State of Michigan,  
Plaintiff-Appellant

\_\_\_\_\_  
-VS-

JACK CHAVIS.

Defendant-Appellee.

Supreme Ct. # 120112

C.O.A. # 218911

Lower Court # 98-014048.

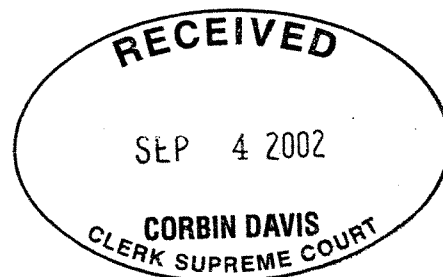
**APPELLEE'S RESPONSIVE BRIEF ON APPEAL.**

ORAL ARGUMENTS REQUESTED.

Proof of Service.

BY:

RICHARD GLANDA, (P32990).  
Attorney for Defendant-Appellee.  
19120 Grandview, # 8  
Detroit, MI. 48219.  
(313)-255-5262.



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**QUESTION PRESENTED FOR REVIEW.**

I.     MUST THE COURT OF APPEALS DECISION BE AFFIRMED  
BECAUSE, MCL 750.411(a)(1), REQUIRES THE  
FALSITY TO BE ABOUT THE COMMISSION OF THE  
A CRIME, TO SUSTAIN A CONVICTION FOR FILING  
A FALSE POLICE REPORT.....???

Plaintiff-appellant answers: "NO."

Defendant-appellee answers: "YES."

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS.

Defendant-Appellant Jack Chavis was convicted on 03-02-99 after a bench trial in the Wayne County Circuit Court, the Hon. Gershwin Drain presiding of:

1. Filing a false police report. (MCL 750.411(A)(1)(b). (pg 27 A)\*)

He was sentenced on 03-24-99 to 12 months of probation with the first 30 days in the county jail, with work release. (pg 9-B)\*

The case involved the defendant Mr. Chavis being car-jacked by a man who sold him cocaine, right outside the drug-house. (pg 39-A to 43-A)

Mr. Chavis however informed the police, that he was car-jacked at a gas station, because Mr. Chavous age 23, who lived his parents did not want them to know that he "was doing cocaine." (pg 46-A)

The trial Court found that defendant was indeed car-jacked. (pg 67-A). The Court also found that defendant lied to the police about where he was car-jacked. (pg 67-A).

The fact that defendant was car-jacked is undisputed on appeal. (See People v. Chavis, 246 Mich 741, at 741 (2001)).

After the close of the proofs, on 02-24-99 the trial Court stated to both counsel, that it was very interested in knowing what level of falsity was necessary to convict for filing a false police report. (pg 1 -B).

\* references to Appellants and Appellee's appendix.

THE COURT: " Well let me ask this question, because its important to my decision in this case. I was looking at the statute, and just briefly looking at the annotations. And usually when you have these false statement charges, there's one of two levels of falsity. Sometimes the law says that if there is anything at all false in the statement, its a false statement. Sometimes there's a requirement of materiality in the falsity of the statement. And I couldn't tell from looking at the statute nor the annotations what was required as far as this staute goes.

And frankly speaking I'd like the two of you to be able to address that issue in your argument...."."..I'm kind of interested in that issue as I framed it."  
(pg 1 -B).

On 03-02-99 defense counsel stated: "I can tell you, I've looked at the issue and there is absolutely no case law on this subject." (pg 2-B).

The prosecutor then stated: "I don't have anything, additional case law either. ...There really isn't anything." (pg 3-B).

The Court stated: "I saw that as something that's part of this case. And I just thought that if either of you could find some case law, that might be helpful..." (pg 4-B and 5-B).

After closing arguments, the Court found as follows:

The Court: " All right. This is somewhat of an interesting case in the sense that he's charged with filing a false police report of a felony. And without going into a lot of detail as fact finding goes, I do believe from all of the evidence and the testimony, that the defendant Mr. Chavis, was car-jacked."

I believe that his car was taken from him with the use of force, and that he didn't voluntarily turn it over or surrender it.

And that's essentially what happened." (pg 67-A)

"..And I also do believe, and find that the defendant did tell, did lie to the police, about how it happened, where it happened, and some other miscellaneous details." (pg 67-A).

"..And when the defendant told the police officer those false facts, he knew that they were false, and deliberately made those false statements." And for that reason I'm going to find the defendant guilty of the charge." (pg 67-A).

Thereafter the Court stated (to defense counsel):

" Mr. Waldhorn, let me say this, that because I believe that there is a real genuine issue in this

case, if the defendant wants to appeal and takes the necessary steps to appeal, I will set an appeal bond,.... because I think there is a real genuine issue here that you raised in the case about whether or not the falsity has to be about the crime itself, as opposed to other subsidiary details." (pg 6-B, and 7-B).

Defendant did file a motion for a new trial, and motion to set aside the conviction, in the trial court. The motion was heard on 09-03-99, and was DENIED. (pg 8-B).

On 09-28-99 defendant filed a brief on appeal with the court of appeals.

The Court of Appeals REVERSING defendant's conviction, at 246 M.A. 741 (2001), stated, "Because the false information reported by the defendant in the present case, did not pertain to whether a crime occurred, the conviction for filing a false police report cannot be sustained."

On 07-31-01 the People filed a motion for re-hearing with the Court of Appeals. The same was denied.

On 09-24-01 People filed an application for leave with this court. The same was denied on 12-18-01.

Thereafter this Court granted People's motion for re-consideration on 04-30-02.

Defendant-appellee Jack Chavis now files his responsive brief.



ARGUMENT.

I. THE COURT OF APPEALS DECISION MUST BE AFFIRMED  
BECAUSE MCL 750.411(A)(1) REQUIRES THE FALSITY TO  
BE ABOUT THE COMMISSION OF A CRIME, TO SUSTAIN  
A CONVICTION FOR FILING A FALSE POLICE REPORT.

As stated earlier, the Court found that Mr. Chavis was indeed car-jacked. However the Court found he did lie about how and where he was carjacked. (pg 67-A).

And the Court was very interested to determine if

a. the falsity had to be about the car-jacking itself,

or

b. the falsity could be about "other subsidiary details",  
in order to convict this defendant of filing a false police report. (pg 6-B and 7-B)

The United States Supreme Court in United States v. Michael Gaudin, 515 U.S. 506, 132 L ed 2d 444, 115 S CT 2310 (1995) stated that: when the trial Court did NOT allow that jury to consider whether or not the false statement made by the accused was MATERIAL OR NOT, it denied the defendant his Fifth and Sixth Amendment rights guaranteed to him under the Federal Constitution.

In Gaudin, 132 L ed 2d, at 454, the U.S. Supreme Court noted, that since the earliest times in Power v. Price, (1836), the defendant "could raise materiality as an affirmative defense,

negating intent to commit perjury."

CJI 2d 24.7, which is a jury instruction about "false statements about title to motor vehicle", was amended in Sept. 1995 in response to Gaudin.

CJI 2d 24.7(3) provides that "the defendant must make a false statement of a material fact. A material fact is an essential matter (required for a valid transfer.)

In People v. Jeske, 128 M.A. 596 (1983), the Court held that a materially false statement is one that would affect the outcome of the proceedings.

In People v. Forbush, 170 M.A. 294 (1988), the Court held that the elements of perjury include that: the defendant swears to material facts, and that the defendant wilfully makes false statements about those Material facts.

In People v. McCoy, 75 M.A. at 165 (1965), the Court ruled that "any false hood in and of itself, does not as a matter of law, support an inference of intent to defraud."

The false hood must be material to support such an intent.

In People v. Getchell, 6 Mich 696 at 503-504 (1859), our Supreme Court held that:

"the object of the defense in this case was to show that there was no intent to cheat or defraud. A false hood does not necessarily imply an intent to defraud,... and however much and severly it may be reprobated in ethics, the law does not assume to punish moral delinquencies as such." Id at 504.

In the case subjudice, Mr. Chavis a 23 year old did not want his parents to know he was out buying crack. So when he got car-jacked he lied about the car-jacking taking place at a gas station, instead of it taking place by a crack-dealer right outside the crack-house. (pg 39 A to 42-A).

MCLA 750.411(a) provides in pertinent part,:

"A person who intentionally makes a false report of the commission of a crime, to a police officer, ...knowing the report is false is guilty of" (filing a false police report.)

Thus to convict under this section, the person must make a false police report of THE COMMISSION OF THE CRIME. Simply lying about miscellenous details regarding where the crime occured, is not enough to convict under this section, taking the above case law into consideration.

In Mr. Chavis' case, he did not lie about being car-jacked; he lied about where he was car-jacked.

Thus there was no false crime reported. The crime was very real.

The Court believed that he was car-jacked.

Therefore defendant's conviction for filing a false police report that he was car-jacked must be vacated, as he was indeed car-jacked.

#### STANDARD OF APPELLATE REVIEW:

Review by an appellate court is De Novo.

The issue involves the interpretation of a statute, MCL 750.411(A)(1)(b).

Appellate Courts review questions of statutory interpretation

DE NOVO. People v. Thomas, 438 Mich 448, 452 (1991).

People v. Houstina, 216 M.A. 70 (1996).

Seals v. Henry Ford Hospital, 123 M.A. 329 (1983).

The Court of Appeals did review DE NOVO the question of whether the offense of filing a false police report of the commission of a crime, proscribes the reporting of false details concerning the crime."

#### DISCUSSION:

The Court of Appeals found that MCL 750.411(a)(1), provides in relevant part that: " a person who intentionally makes the false report of the commission of a crime... is guilty of a crime".

Here defendant Chavis did not make a false report about the commission of the crime (car-jacking). He was inded car-jacked, and the People did not dispute that on appeal.

However, defendant Chavis did indeed lie about where he was car-jacked. The Court of Appeals therefore stated that "because the false information reported by defendant in the present case did not pertain to whether a crime occurred, the conviction for filing a false police report of the commission of a crime cannot be sustained."

There is no direct Michigan case on point.

In the case sub-judice, Mr. Chavis a 23 year old did not want his parents to know he was out buying crack. So when he got car-jacked he lied about the car-jacking taking place at a gas-station, instead of it taking place by a crack-dealer right

outside the crack-house. (pg 39 A to 42-A).

### CONCLUSION.

The State and Federal Constitutions prevent the conviction of a criminal defendant, unless the prosecution establishes each and every element of a criminal offense beyond a single reasonable doubt.

U.S. Const. Ams, V, XIV; Const. 1963 art 1 § 17.

In re Winship, 397 U.S. 358 (1970).

MCLA 750.411(a) provides in pertinent part that "A person who intentionally makes a false of the commission of a crime, to a police officer, ...knowing the report is false is guilty of . .", (filing a false police report.)

Thus for a conviction to be sustained under this section a person must make a false police report about the commission of the crime. Lying about miscellaneous details is not enough to sustain a conviction under this sub-section.

Plaintiff fails to see the chilling effect it would have on victims if Mr. Chavis' conviction were allowed to stand.

Victims who are robbed, shot or stabbed in brothels, or drug infested neighborhoods, would no longer complain to the police or seek assistance, for fear of the world knowing that they were in the wrong place.

Mr. Chavis's conviction for filing a false police report about a car-jacking must be vacated, as he was indeed car-jacked.

There was no false report of a commission of a crime made, as required by MCL 750.411(a)(1).

The crime was indeed committed, and Mr. Chavis was the victim of the crime.

The Court of Appeals has listed a number of cases of sister states, where defendant was convicted for filing a false police report, but only only where the defendant lied about the commission of the crime, not miscellaneous details of the crime. For the aforementioned reasons the Court of Appeals decision must be AFFIRMED by this Court.

RELIEF REQUESTED.

WHEREFORE Defendant-Appellant JACK CHAVIS, asks this Honorable Court to AFFIRM the decision of the Court of Appeals, thereby REVERSING his conviction....

Respectfully submitted:

  
\_\_\_\_\_.

Dated: 08-28-02.

RICHARD GLANDA. (P32990).  
Attorney for Defendant-Appellant.  
19120 Grandview, # 8  
Detroit, MI. 48219.  
(313)-255-5262.